

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

RAYMOND SETZKE

PLAINTIFF

v.

Civil No. 07-5185

SHERIFF KEITH FERGUSON;
CAPTAIN HUNTER PETRAY;
OFFICER REYES; OFFICER
FRY; and JOHN DOE OFFICERS

DEFENDANTS

ORDER

Pending before the court are the plaintiff's motions for relief (Doc. 6), his motion to amend or correct his complaint (Doc. 7), and his second motion to amend or correct his complaint (Doc. 8).

In the motion for relief (Doc. 6), plaintiff maintains his legal mail is being read before being given to him, he is being denied legal supplies, and being denied access to the law library. While other inmates are allowed to have family members drop glasses off for them at the jail, he maintains his family, who lives out of state, is being prevented from mailing him his glasses. He asks for the court to order defendants to quit opening his legal mail, provide him adequate legal supplies, and allow him access to the law library. Finally, he asks that the court order the Arkansas Department of Correction to promptly transport him to prison.

The motion for relief (Doc. 6) is denied. Plaintiff is in effect asking the court to order injunctive relief on issues or claims that are not even part of this lawsuit and/or issues that plaintiff has not yet prevailed on yet or showed a likelihood of success on the merits on. In this case, plaintiff maintains Officer Reyes denied him emergency medical help and then Officers

Reyes and Fry used excessive force against him on October 7, 2007. He maintains other officers present did nothing to prevent the attack. With respect to Captain Petray and Sheriff Ferguson, plaintiff maintains they failed to properly train and supervise their subordinates.

In his motion to amend or correct the complaint (Doc. 7), plaintiff asks that if it be proven that Officer Reyes, Officer Fry, or the unknown officers are active in the National Guard he be allowed to sue them in their military capacities. He states he would also like to hold the federal government liable for performing military training exercises on inmates. If the defendants have military training, he states their commanders should be informed and defendants should be subjected to court martial.

The motion (Doc. 7) is denied. First, even if the defendants are, or were, at some point active in the National Guard, they were not actively working for the National Guard while at the BCDC. Thus, while their training might have some possible relevance to their physical capabilities or past training, it does not have any other relevance to this case.

In his second motion to amend or correct the complaint (Doc. 8), plaintiff indicates that from September 20, 2007, until November 4, 2007, he was not classified as a convicted sex offender but was instead classified "as medical with Hep 'C' only." On November 4th he alleges he was told he was classified as a convicted sex offender and moved to segregation which meant a more protective environment.

After the assault against him on October 7th, plaintiff alleges the staff knew he had a sexual offender conviction twenty-eight years ago. He contends they denied him medical treatment to cover up the assault and denied him a number of other things due to his being an "ex-sex offender. For example, he maintains he was denied toilet paper on one occasion for an hour and a half, he was denied recreation on November 4th and 5th, and only got thirty minutes

of recreation on the 8th, he was denied use of the law library for his out-standing misdemeanors on which he represented himself, Deputy Fry opened his legal mail on November 8th and scanned every page, he was denied a hygiene shave even though others in the pod were clean shaven, and he was denied a medical shave due to pain and breaking out. Plaintiff also mentions Lt. Carter. Plaintiff maintains Lt. Carter turned a blind-eye to the actions of his subordinates and failed to protect him from harm.

The motion to amend (Doc. 8) is granted. **The clerk is directed to file the motion as plaintiff's amended complaint. The clerk is also directed to add Lt. Carter as a defendant.**

IT IS SO ORDERED this 27th day of December 2007.

/s/ *J. Marschewski*
HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE